

DIVISION 4

GENERAL PROVISION

Payment from a deceased person's account

100. (1) Notwithstanding anything in any written law or rule of law, a bank licensee may, without the production of letters of probate or letters of administration, pay any sum not exceeding the equivalent of five thousand ringgit standing to the credit of a deceased person to any person who produces satisfactory proof of—

- (a) the death of such deceased person; and
- (b) his entitlement under the law to the sum standing to the credit of such deceased person.

(2) A bank licensee shall not make any payment under subsection (1) if it has received other claims to any money standing to the credit of the deceased person.

(3) A bank licensee or its directors or officers shall not be liable in respect of any claim by any person in connection with any payment made in accordance with this section but such person may recover any sum lawfully due to him from the person to whom such payment has been made.

PART VII

LABUAN INSURANCE

DIVISION I

PRELIMINARY

Interpretation

101. (1) In this Part, unless the context otherwise requires—

“domestic insurance business” means insurance business where the subject matter of the contract is—

- (a) property which at the time of the making of the contract is situated in Malaysia or is in transit to or from Malaysia;

- (b) a ship or an aircraft registered in Malaysia and all liabilities arising from the operation of such ship or aircraft;
- (c) the life or any contingency related to any person who, at the time of the making of the contract, is a resident;
or
- (d) a risk of any nature in respect of any person who, at the time of the making of the contract, is a resident;

“general insurance business” means insurance business which is not life insurance business but which includes accident, medical, surgical and hospital expenses insurances related to any person;

“insurance business” means the business of effecting and carrying out contracts—

- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- (b) to pay a sum of money or other thing of value upon the happening of an event.

and includes reinsurance business;

“insurance licence” means a licence granted under this Part;

“insured” means a person who is covered by an insurance policy;

“insurer” means a person who carries on insurance business;

“Labuan captive insurance business” means Labuan insurance business where the insured is a related corporation or associate corporation of the Labuan insurer or where the insured is any other person in respect of whom the Labuan insurer is authorised by the Authority to provide insurance or reinsurance;

“Labuan insurance broker” means a person who is licensed to—

- (a) arrange Labuan insurance business on behalf of prospective or existing policy owners;

- (b) arrange Labuan reinsurance business on behalf of any insurer seeking reinsurance; or
- (c) analyse the financial circumstances of another person and provides a plan to meet that other person's financial needs and objectives, whether or not a fee is charged in relation thereto;

"Labuan insurance business" means insurance business which is not domestic insurance business and which is transacted in foreign currency, and includes takaful and retakaful business, Labuan captive insurance business and such other Labuan insurance business as may be approved by the Authority;

"Labuan insurance manager" means a person who is licensed to provide management or administration services related to Labuan insurance business but does not include a Labuan underwriting manager;

"Labuan insurer" means a person who is licensed to carry on Labuan insurance business;

"Labuan underwriting manager" means a person, not being a *bona fide* employee, who is licensed to provide underwriting services, including the administration of the business, to one or more Labuan insurers;

"life insurance business" means insurance business connected with any policy by which payment of policy monies is insured on death or on the happening of any contingency dependent on the termination or continuation of human life and includes any incidental extension of cover and reinsurances of such business;

"Malaysian insurer" means an insurer which is licensed under the Insurance Act 1996 or the Takaful Act 1984;

"net premium income", in relation to a financial year, means the premiums receivable under contracts of insurance or reinsurance after deducting any premiums payable for reinsurances arranged in respect of such contracts of insurance or reinsurance;

“policy” means an insurance policy and includes a cover note or any written contract of insurance whether or not embodied in or evidenced by an instrument in the form of an insurance policy; and any reference to a policy of an insurer includes a reference to any policy in respect of which the insurer is under any liability, whether the policy was issued by the insurer or the liability was transferred to the insurer from another insurer;

“policy owner” means any person who effects a policy;

“reinsurance business” means a business whereby the reinsurer assumes a part of the liability under an original contract of insurance of another insurer or reinsurer;

“reinsurer” means a person who carries on or transacts or holds himself out as carrying on or transacting reinsurance business;

“working funds” means—

- (a) in relation to a Labuan company, the paid-up capital unimpaired by losses; and
- (b) in relation to a foreign Labuan company or a branch of a Malaysian insurer, the surplus of assets over liabilities to be maintained in the books of its office in Labuan.

(2) Where fifteen per centum or more of the voting shares of a corporation are held by another corporation, the first-mentioned corporation shall be deemed to be an associate corporation of the other corporation, and any reference in this Act to an “associate corporation” shall be construed as a reference to that first-mentioned corporation or that other corporation, as the case may be.

DIVISION 2

LICENSING OF LABUAN INSURANCE BUSINESS AND LABUAN INSURANCE-RELATED ACTIVITIES

Licensing of Labuan insurance business and Labuan insurance-related activities

102. (1) No person shall carry on or transact or hold himself out as carrying on or transacting any Labuan insurance business unless that person is—

- (a) a Labuan company;

- (b) a foreign Labuan company; or
- (c) a branch of a Malaysian insurer,

and holds a valid insurance licence.

(2) No person shall carry on or transact or hold himself out as carrying on or transacting any business as a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker or any other Labuan insurance-related activities as may be specified by the Authority unless that person holds a valid insurance licence.

(3) Except with the prior written approval of the Authority, a person who is not an insurance licensee shall not assume or use the words "Labuan insurer", "Labuan insurance manager", "Labuan underwriting manager", "Labuan insurance broker" or any derivative of such words in any language capable of being construed as indicating the carrying on of Labuan insurance business or Labuan insurance-related activities by such person.

(4) This section shall not apply to bank licensees as defined in Part VI, distributing the insurance products of a Labuan insurer subject to the prior written approval of the Authority.

Application for insurance licence to carry on Labuan insurance business

103. (1) Every applicant for an insurance licence to carry on Labuan insurance business shall satisfy the Authority that—

- (a) the applicant is, or will be, a Labuan company or a foreign Labuan company or a branch of a Malaysian insurer;
- (b) the working funds of the applicant—
 - (i) in a case where the applicant proposes to carry on either life insurance business or general insurance business, are at least seven million and five hundred thousand ringgit or its equivalent in any foreign currency or such other amount or denomination as may be specified by the Authority;
 - (ii) in a case where the applicant proposes to carry on solely reinsurance business, are at least ten million ringgit or its equivalent in any foreign currency or such other amount or denomination as may be specified by the Authority; or

- (iii) in a case where the applicant proposes to carry on solely Labuan captive insurance business, are at least three hundred thousand ringgit or its equivalent in any foreign currency or such other amount or denomination as may be specified by the Authority;
- (c) the sum of money specified in paragraph (b) is maintained in an account of the applicant with a bank in Labuan, as evidenced by a certificate of such bank, at the time when the application is made;
- (d) the person in control, director and principal officer of the applicant are fit and proper persons to be associated with a Labuan insurer;
- (e) the applicant either—
 - (i) has established, or will establish, its management in Labuan with adequate knowledge and expertise of the Labuan insurance business to be carried on; or
 - (ii) has appointed, or will appoint, a licensed Labuan underwriting manager or Labuan insurance manager in Labuan with adequate knowledge and experience of the Labuan insurance business to be carried on, save that with respect to applicants who apply to carry out Labuan captive insurance business, only a Labuan underwriting manager may be appointed; and
- (f) the applicant will become a member of an association of Labuan insurers.

(2) Notwithstanding paragraph (1)(b), the Authority may, having regard to the extent and volume of Labuan insurance business which the applicant proposes to carry on, specify a lesser amount of working funds, subject to the applicant providing adequate guarantee on such terms and conditions as may be acceptable to the Authority for the difference in amount.

(3) Every application for a license to carry on Labuan insurance business shall—

- (a) be made in writing and be submitted to the Authority;

- (b) state whether such Labuan insurance business is in relation to life insurance business or general insurance business;
- (c) set out the types of Labuan insurance business, as the case may be, which are to be carried on under the insurance licence; and
- (d) set out the applicant's business plans; and
- (e) be accompanied by—
 - (i) a copy of—
 - (aa) the applicant's constituent documents duly authenticated by a director or officer of the applicant;
 - (bb) the resolutions of the board and the general meeting, if any, of the applicant, duly authenticated by a director or officer of the applicant, authorising the applicant to apply for an insurance licence;
 - (cc) the applicant's certificate of incorporation or registration, as the case may be, certified by the relevant registering authority in the place of establishment or origin of the applicant; and
 - (dd) except in relation to an application to carry on a Labuan captive insurance business, a letter of awareness from the applicant's home supervisory authority or such authority as may be specified by the Authority.
 - (ii) a copy of the applicant's audited annual accounts for the three consecutive years immediately preceding the application, where applicable;
 - (iii) a statement on—
 - (aa) the name, place and date of establishment of the applicant;
 - (bb) the names, addresses, qualifications and experience of the directors and officers responsible for the overall management of the affairs of the applicant; and

- (cc) the name and address of each member who holds fifteen per centum or more of the voting shares of the applicant;
- (iv) a declaration by the applicant on the probity of the applicant's directors and officers who would be concerned in the management of the proposed Labuan insurer; and
- (v) in the case of an application by a Labuan company, a guarantee secured and an undertaking given, and, in the case of an application by a foreign Labuan company or a branch of a Malaysian insurer, an undertaking given, by the applicant in respect of its Labuan insurance business, in such manner and such form as may be acceptable to the Authority, and such guarantee and undertaking shall provide, *inter alia*, that—
 - (aa) the applicant shall comply with the financial obligations and requirements imposed under this Act and shall meet the applicant's liabilities in respect of its Labuan insurance business;
 - (bb) where the applicant is a Labuan company, no participant of the applicant who holds ten per centum or more of the paid-up capital of the applicant shall be changed without the prior written approval of the Authority and, where the applicant is a foreign Labuan company, that it shall promptly notify the Authority of any change in its participants who hold ten per centum or more of its paid-up capital; and
 - (cc) every director or the principal officer of the applicant responsible for the management of its Labuan insurance business shall be a fit and proper person and the appointment of such director or principal officer shall only be made after consultation with the Authority.

(4) Paragraph (3)(e)(v) shall not apply to an application to carry on a Labuan captive insurance business where the policy owner is a related corporation or associate corporation of the Labuan insurer.

(5) The Authority may require from the applicant such other information or documents as may be specified by the Authority for the purpose of determining the application.

(6) The matters specified under subsection (5) may differ as between applicants, or different classes, categories or descriptions of applicants as may be determined by the Authority.

(7) An application under this section may be made in relation to a person not yet established under the Labuan Companies Act 1990 but will be so established in the event of such person obtaining an insurance licence, and in such event the requirements of subsection (1) may be varied by the Authority as it deems appropriate.

Application for insurance licence to carry on Labuan insurance-related activities

104. (1) Every applicant for an insurance licence to carry on business as a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker shall satisfy the Authority that—

- (a) the person in control, director and principal officer of the applicant are fit and proper persons;
- (b) the applicant is able to maintain sufficient funds in its business to cover its expenses of operations and management in Labuan for at least six months;
- (c) in respect of an applicant for an insurance licence to carry on the business of a Labuan insurance manager or Labuan underwriting manager—
 - (i) the applicant has established, or undertakes to establish, its management in Labuan with adequate knowledge and expertise of the Labuan insurance business to be carried on; or
 - (ii) the applicant has appointed, or undertakes to appoint, a licensed Labuan insurance manager or Labuan underwriting manager in Labuan with adequate knowledge and experience of the Labuan insurance business to be carried on;

- (d) in respect of an applicant for an insurance licence to carry on business as a Labuan insurance broker—
 - (i) the applicant has established, or undertakes to establish, its management in Labuan with adequate knowledge and expertise of the Labuan insurance business to be carried on; or
 - (ii) the applicant has appointed, or undertakes to appoint, a licensed Labuan insurance manager in Labuan with adequate knowledge and experience of the Labuan insurance business to be carried on;
- (e) the applicant either has obtained or undertakes to obtain any professional indemnity insurance policy of not less than two million and five hundred thousand ringgit or its equivalent in any foreign currency or such other amount or denomination as may be specified by the Authority, and remain indemnified under such policy throughout its operation in Labuan;
- (f) the applicant holds such qualification as may be specified by the Authority; and
- (g) the applicant undertakes to become a member of an association of Labuan insurers.

(2) Every application for a licence to carry on business as a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker shall—

- (a) be made in writing and be submitted to the Authority;
- (b) state the nature of the business to be carried on under the insurance licence; and
- (c) be accompanied by—
 - (i) a copy of—
 - (aa) the applicant's constituent documents, duly authenticated by a director or officer of the applicant;
 - (bb) the resolutions of the board and the general meeting, if any, of the applicant, duly authenticated by a director or officer of the applicant, authorising the applicant to apply for an insurance licence;

- (cc) the applicant's certificate of incorporation or registration, as the case may be, certified by the relevant registering authority in the place of establishment or origin of the applicant; and
 - (dd) a letter of awareness from the applicant's home supervisory authority or such authority as may be specified by the Authority;
- (ii) a copy of the applicant's audited annual accounts for the three consecutive years immediately preceding the application, where applicable;
- (iii) a statement on—
 - (aa) the name, place and date of establishment of the applicant;
 - (bb) the names, addresses, qualifications and experience of the directors and officers responsible for the overall management of the affairs of the applicant; and
 - (cc) the name and address of each member who holds fifteen per centum or more of the voting shares of the applicant;
- (iv) a declaration by the applicant on the probity of the applicant's directors and officers who would be concerned in the management of the proposed Labuan insurance manager, the proposed Labuan underwriting manager or the proposed Labuan insurance broker, as the case may be;
- (v) in the case of an application by a Labuan company, a guarantee secured and an undertaking given, and, in the case of an application by a foreign Labuan company or a branch of a Malaysian insurer, an undertaking given, by the applicant in respect of the business of a Labuan insurance manager, Labuan underwriting manager or Labuan insurance

broker, as the case may be, in such manner and such form as may be acceptable to the Authority, and such guarantee and undertaking shall provide, *inter alia*, that—

- (aa) the applicant shall comply with the financial obligations and requirements imposed under this Act and shall meet the applicant's liabilities in respect of the business of a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker, as the case may be;
- (bb) where the applicant is a Labuan company, no participant of the applicant who holds ten per centum or more of the paid-up capital of the applicant shall be changed without the prior written approval of the Authority and, where the applicant is a foreign Labuan company, that it shall promptly notify the Authority of any change in its participants who hold ten per centum or more of its paid-up capital; and
- (cc) every director or the principal officer of the applicant responsible for the management of the business of a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker, as the case may be, shall be a fit and proper person and the appointment of such director or principal officer shall only be made after consultation with the Authority.

(3) The Authority may require from the applicant such other information or documents as may be specified by the Authority for the purpose of determining the application.

(4) The matters specified under subsection (3) may differ as between applicants, or different classes, categories or descriptions of applicants as may be determined by the Authority.

Grant of insurance licence

105. (1) Upon receiving an application for an insurance licence, the Authority may approve the application, with or without conditions, or reject the application.

(2) Where the Authority rejects the application, the Authority shall notify the applicant in writing of the rejection.

(3) Where the Authority approves the insurance licence under subsection (1), the Authority shall issue the insurance licence to the applicant.

(4) The Authority may specify in the insurance licence the type of activities the insurance licensee may carry on.

(5) An applicant who is aggrieved by the decision of the Authority under subsection (1) to reject his application, may within thirty days of the decision being notified to him, appeal to the Minister in writing.

(6) An insurance licensee shall comply with any conditions imposed under a license granted under subsection (1) for the duration of the license.

(7) A licence granted under this section shall remain in force until it is surrendered or revoked in accordance with this Act.

(8) The Authority may, upon consultation with the Minister, by written notice to the insurance licensee vary the existing terms and conditions or impose such additional terms and conditions, in respect of an insurance licence, from time to time as it deems fit.

Publication of list of all insurance licensees

106. The Authority shall publish annually not later than 31 March of each year a list of all existing insurance licensees as at 31 December of the preceding year and their licence numbers in the *Gazette*, and if any licence is issued, revoked or surrendered, subsequent to such publication, the Authority shall cause to be published in the *Gazette* as soon as practicable a revised list of all existing insurance licensees and their licence numbers.

Continuing licensing requirements

107. (1) Every Labuan insurer which is a Labuan company shall, prior to the making of any amendment or alteration to any of its constituent documents, or prior to any change of its person in control, director or principal officer, furnish to the Authority particulars in writing of any such proposed amendment, alteration or change, for the approval of the Authority.

(2) Every Labuan insurer which is a foreign Labuan company shall, prior to the making of any change of its principal officer, furnish to the Authority the particulars in writing of any proposed change for the approval of the Authority.

(3) Every Labuan insurer which is a foreign Labuan company or a branch of a Malaysian insurer shall notify in writing within three months after the making of any amendment or alteration to any of its constituent documents, or any change of its person in control or director and furnish to the Authority particulars in writing of such amendment, alteration or change duly authenticated in a manner acceptable to the Authority by a director of the Labuan insurer.

(4) Every insurance licensee shall immediately notify the Authority of any amendment or alteration to any information which had been furnished to the Authority in connection with the application for the insurance licence.

(5) No Labuan insurer shall make any amendment or alteration to its constituent documents which are contrary to any written law.

(6) Where the Labuan insurer is a Labuan company, no participant of the Labuan insurer who holds fifteen per centum or more of the paid-up capital of the applicant shall be changed without the prior written approval of the Authority and, where the Labuan insurer is a foreign Labuan company, it shall promptly notify the Authority of any change in its participants who hold fifteen per centum or more of its paid-up capital.

DIVISION 3

FINANCIAL REQUIREMENTS AND DUTIES OF AND
RESTRICTIONS ON INSURANCE LICENSEES

Appointment of actuary

108. Every Labuan insurer carrying on life insurance business shall appoint an actuary annually within such period as may be specified by the Authority.

Margin of solvency

109. Every Labuan insurer, including an insurance licensee which carries on Labuan captive insurance business, shall ensure that the realisable value of its assets exceeds the amount of its liabilities by a margin in such an amount or calculated in such manner as may be specified in writing by the Authority from time to time.

Separate accounts to be kept by Labuan insurer

110. (1) Every Labuan insurer shall keep the accounts and funds in respect of its Labuan insurance business separate from its other funds.

(2) Every Labuan insurer which carries on both life insurance business and general insurance business shall keep the accounts and funds in respect of its life insurance business separate from the accounts and funds in respect of its general insurance business.

(3) Every Labuan insurer which is a branch of a Malaysian insurer shall keep the accounts in respect of its Labuan insurance business separate from the accounts in respect of its domestic insurance business carried on in Labuan.

Submission of financial statements

111. Every Labuan insurer shall comply with the requirements with respect to the submission of financial statements as set out in the Third Schedule.

Subsidiaries and offices of insurance licensee

112. An insurance licensee which is a Labuan company may, subject to the prior written consent of the Authority, open any office other than its principal place of business in Labuan, or acquire or establish any subsidiary.

Restriction on business by Labuan insurer

113. (1) No Labuan insurer shall carry on any business activities in Labuan or elsewhere from its office in Labuan other than its Labuan insurance business or business activities in connection with or for the purposes of such Labuan insurance business.

(2) Notwithstanding the definition of "Labuan insurance business" and notwithstanding subsection (1), a Labuan insurer may carry on the reinsurance of domestic insurance business, including the reinsurance of domestic insurance business transacted in the Malaysian currency and such other business as may be specified by the Authority.

(3) No Labuan insurer shall act on behalf of another Labuan insurer as a Labuan insurance manager or Labuan underwriting manager unless such first-mentioned Labuan insurer has been granted an insurance licence to carry on business as Labuan insurance manager or Labuan underwriting manager, as the case may be.

Restrictions on and duties of Labuan insurance manager, Labuan underwriting manager and Labuan insurance broker

114. (1) No licensed Labuan insurance manager shall provide any services other than administrative services and no licensed Labuan underwriting manager shall provide any services other than underwriting services.

(2) No licensed Labuan underwriting manager shall provide underwriting services in or from Labuan to any person not licensed under this Act or to any business carried on by an insurer registered under the Insurance Act 1996 or by a takaful operator registered under the Takaful Act 1984.

(3) No licensed Labuan insurance broker shall act as a broker in respect of domestic insurance business, but a licensed Labuan insurance broker may handle the reinsurance of domestic insurance business, including the reinsurance of domestic insurance business transacted in the Malaysian currency.

(4) Every licensed Labuan insurance manager or licensed Labuan underwriting manager who acts on behalf of a Labuan insurer shall maintain its own funds separate from the funds of the Labuan insurer and shall not apply the funds of such Labuan insurer to meet any of its expenses or liabilities other than in respect of the Labuan insurance business.

List of Labuan insurers to be supplied by Labuan insurance manager and Labuan underwriting manager

115. Every licensed Labuan insurance manager and licensed Labuan underwriting manager shall, within thirty days from the close of its financial year, submit to the Authority, in such form and manner as may be specified by the Authority, a list of all Labuan insurers for whom such licensed Labuan insurance manager provides administrative services or licensed Labuan underwriting manager provides underwriting services.

Conduct of business

116. (1) Every Labuan insurer shall—

- (a) conduct its business with due diligence and care in accordance with sound insurance principles;
- (b) follow accepted international accounting standards or such other standards as may be approved by the Authority;
- (c) register all assets in its name, or in the name of a custodian or nominee for the Labuan insurer where assets are acquired in the name of such custodian or nominee, and in the case of bearer shares, hold them in safe custody; and
- (d) indicate clearly on its letterhead, stationery and other documents containing its name that it is licensed under this Act, together with the number of its insurance licence.

(2) No Labuan insurer shall advertise or publish, in any form, information which is untrue or which is likely to mislead another person in relation to the written laws applicable to Labuan insurers and their related businesses and activities or that Labuan insurer's financial status or insurance or reinsurance plans or any other matter in respect of its Labuan insurance business.

(3) Paragraphs (1)(a) and (d) and subsection (2) shall apply with the necessary modifications to a licensed Labuan insurance manager, licensed Labuan underwriting manager and licensed Labuan insurance broker.

DIVISION 4

PAYMENT OF POLICY MONIES UNDER A LIFE POLICY AND PERSONAL ACCIDENT POLICY

Application of this Division

117. In this Division, a reference to a policy is a reference to a life policy, including a life policy under section 23 of the Civil Law Act 1956 [Act 67], and a personal accident policy effected by a policy owner upon his own life providing for payment of policy monies on his death.

Power to make nomination

118. (1) A policy owner who has attained the age of eighteen years may nominate a natural person to receive policy monies payable upon his death under the policy by notifying the Labuan insurer in writing of the name, date of birth, identity card number or birth certificate number and address of the nominee at the time the policy is issued.

(2) Where a nomination is made after the policy is issued, the policy owner shall submit the policy together with the particulars of the nominee referred to in subsection (1) for the Labuan insurer's endorsement of the nomination on the policy.

(3) A nomination made under subsection (1) shall be witnessed by a person of sound mind who has attained the age of eighteen years and who is not a nominee named under that subsection.

(4) The Labuan insurer—

- (a) shall prominently display in the nomination form a notice that the policy owner has to assign the policy benefits to his nominee if his intention is for his nominee, other than his spouse, child or parent, to receive the policy benefits beneficially and not as an executor;
- (b) shall record the nomination and the particulars of the nominee in its register of policies; and
- (c) shall register in its register of policies the nomination made under subsection (1) and such nomination shall take effect from the date the nomination is registered.

(5) A failure to comply with subsection (4) shall affect the validity of the nomination unless otherwise proven that the necessary notification of the nomination was made by the policy owner and given to the Labuan insurer for endorsement on the policy.

(6) A nomination made under subsection (1) may be in favour of one person or several persons and where there is more than one person nominated, the policy owner may direct that specified shares be paid to the persons nominated and in the absence of direction by the policy owner, the Labuan insurer shall pay such persons in equal shares.

Revocation of nomination

119. (1) A nomination, including a nomination to which section 121 applies, shall be revoked—

- (a) upon the death of the nominee, or where there is more than one nominee, upon the death of all the nominees, during the lifetime of the policy owner;
- (b) by a notice in writing given by the policy owner; or
- (c) by any subsequent nomination.

(2) Subject to subsection (1), a nomination shall not be revoked by a will or by any other act, event or means.

(3) Where there is more than one nominee and one of the nominees predeceases the policy owner, in the absence of any subsequent nomination by the policy owner disposing of the share of the deceased nominee, the Labuan insurer shall pay the share of the deceased nominee to the remaining nominees in proportion to their respective shares.

Payment of policy monies

120. (1) Subject to subsection (2), where a policy owner dies having made a nomination, the Labuan insurer shall pay the policy monies of the deceased policy owner according to the direction of the nomination upon receipt of a claim by the nominee and the claim is accompanied by proof of death of the policy owner.

(2) Where a nominee fails to claim the policy monies within two months of the Labuan insurer becoming aware of the death of the policy owner, the Labuan insurer shall notify the nominee in writing at his last-known address of his entitlement to claim the policy monies.

(3) Where a nominee fails to claim the policy monies within twelve months of the notification under subsection (2), section 124 shall apply as though no nomination was made.

(4) Where a nominee, other than a nominee under section 121, dies after the death of the policy owner but before any policy monies has been paid to him as nominee, section 119 or section 124 shall apply to the policy, as the case may be.

Trustee of policy monies

121. (1) A nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy monies payable upon the death of the policy owner, if—

- (a) the nominee is his spouse or child; or
- (b) where there is no spouse or child living at the time of nomination, the nominee is his parent.

(2) A payment under subsection (1) shall not form part of the estate of the deceased policy owner or be subject to his debts.

(3) The policy owner, by the policy, or by a notice in writing to the Labuan insurer, may appoint trustees of the policy money and where there is no trustee—

(a) the nominee who is competent to contract; or

(b) where the nominee is incompetent to contract, the parent of the incompetent nominee and where there is no surviving parent, the Public Trustee,

shall be the trustee of the policy monies and the receipt of a trustee shall be a discharge to the Labuan insurer for all liability in respect of the policy monies paid to the trustee.

(4) A policy owner shall not deal with a policy to which subsection (1) applies by revoking a nomination under the policy, by varying or surrendering the policy, or by assigning or pledging the policy as security, without the written consent of the trustee.

(5) Nothing in this section shall prejudice a creditor of a policy owner from applying to the court for a declaration that this section, wholly or partly, is inapplicable to any particular policy on the ground that the premiums under that policy were paid to defraud the creditor.

Nominee other than a nominee under section 121

122. (1) A nominee, other than a nominee under section 121, shall receive the policy monies payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner and be subject to his debts and the Labuan insurer shall be discharged from liability in respect of the policy monies paid.

(2) Subsection (1) applies to a nominee of a Muslim policy owner who, on receipt of the policy monies, shall distribute the policy monies in accordance with shariah principles.

Assigned or pledged policy monies

123. (1) Notwithstanding a nomination under section 118 or the creation of a trust under subsection 121(1), where the policy monies, wholly or partly, have been pledged as security or assigned to a person, the claim of the person entitled under the security or the assignee shall have priority over the claim of the nominee and, subject to the rights under the security or the assignment being preserved, the Labuan insurer shall pay the balance of the policy monies to the nominee.

(2) Where more than one person is entitled under the security or the assignment, the respective rights of the persons entitled under the security or the assignment shall be in the order of priority according to the priority of the date on which the security or the assignment was created, both security and assignment being treated as one class for this purpose.

Payment of policy monies where there is no nomination

124. (1) Where a policy owner of a policy dies without having made a nomination, subject to section 123, the Labuan insurer shall pay the policy monies of the deceased policy owner to the applicant who produces the Grant of Probate or Letters of Administration or Distribution Order.

(2) Subject to subsection (1), the Labuan insurer may pay to the policy owner's spouse, child or parent in that order of priority and where there is more than one spouse, child or parent, in equal shares to each person of that class and where there is no spouse, child or parent and—

(a) where the policy monies do not exceed one hundred thousand ringgit or its equivalent in foreign currency or such greater amount or denomination as may be specified, the Labuan insurer may pay all that policy monies without requiring the Grant of Probate or Letters of Administration or Distribution Order—

(i) to a person who satisfies the Labuan insurer to be entitled and likely to be given the Grant of Probate or Letters of Administration or Distribution Order;
or

(ii) to a person who satisfies the Labuan insurer to be beneficially entitled to the estate of the deceased policy owner; or

(b) where the policy monies are more than one hundred thousand ringgit or its equivalent in foreign currency, or such greater amount or denomination may be specified, the Labuan insurer may pay to the person referred to in subparagraph (a)(i) or (ii) the amount referred to in that paragraph and subject to subsection (6), pay to that person the balance of the policy monies upon production of the Grant of Probate or Letters of Administration or Distribution Order.

(3) In this section, a reference to policy monies is a reference to the aggregate amount of policy monies in respect of all policies of the policy owner with that Labuan insurer where there is no nomination.

(4) The Grant of Probate or Letters of Administration or Distribution Order granted or having effect as if granted, in respect of the personal estate comprising the policy monies, by a court in Malaysia or a competent authority outside Malaysia, or its certified copy shall be sufficient proof to the Labuan insurer to pay the policy monies to the person to whom the grant was made.

(5) The Labuan insurer may accept the Grant of Probate or Letters of Administration or Distribution Order or any other document having the same effect, granted by a court in Malaysia or a competent authority outside Malaysia, as sufficient proof to pay the policy monies of the deceased policy owner to the person to whom the grant was made, provided that such Grant of Probate or Letters of Administration or Distribution Order or other document having the same effect has been duly registered with the court in Malaysia and sealed in accordance with the Probate and Administration Act 1959 [Act 97].

(6) Where, upon the expiry of twelve months after a payment under paragraph (2)(b) has been made by a Labuan insurer, a balance of the policy monies still remains payable and no claim has been made by a person who holds a Grant of Probate or Letters of Administration or Distribution Order, the Labuan insurer shall pay the balance of the policy monies to the person who received the initial payment of the policy monies.

(7) Policy monies paid under this section shall be deemed to have been duly paid and the Labuan insurer shall be discharged from liability in respect of the policy monies so paid notwithstanding the absence or invalidity of, or any defect in, the Grant of Probate or Letters of Administration or Distribution Order or any other document having the same effect.

(8) A person to whom a payment may be made under this section shall give a receipt which shall be deemed to be a valid receipt.

Payment to person incompetent to contract

125. Where a person has not attained the age of eighteen years, or is certified by a medical practitioner in the public service to be of unsound mind and no committee of his estate has been appointed, or to be incapable, by reason of infirmity of mind or body, of managing himself and his property and affairs, the Labuan insurer—

(a) in the case of a nominee under subsection 121(1)—

(i) if the policy monies are ten thousand ringgit or its equivalent in foreign currency or less or such other amount or denomination as may be specified, may pay to a person who satisfies the Labuan insurer that he will apply the policy monies for the maintenance and benefit of the nominee under subsection 121(1), or a person to whom policy monies are payable under subsection 124(2) or (6), subject to the execution of an undertaking by that person that the policy monies will be applied solely for the maintenance and benefit of the nominee; and

(ii) if the policy monies are more than the amount specified in paragraph (a), shall pay to the Public Trustee or a trust company nominated by the Public Trustee; or

(b) in the case of a person to whom policy monies are payable under subsection 124(2) or (6), shall pay to the Public Trustee or a Labuan trust company nominated by the Public Trustee.

Distribution of policy monies in due course of administration

126. A person to whom policy monies may be paid under section 124 shall receive the policy monies as an executor and not solely as a beneficiary and shall distribute the policy monies in the due course of administration of the estate of the deceased person in accordance with the terms of a will of the deceased person, and if there is not such will, in accordance with the law applicable to the administration, distribution and disposition of his estate upon his intestacy.

This Division to prevail over policy and any other written law

127. (1) This Division shall have effect in relation to a policy which is in force on or after its operation, and in relation to a nomination made before, on or after its operation, notwithstanding anything contained in the policy, and nothing contained in a policy shall derogate from, or be construed as derogating in any manner or to any extent from, this Division.

(2) This Division shall have shall force and effect notwithstanding anything inconsistent with or contrary to any other written law relating to probate, administration, distribution or disposition of the estates of deceased persons, or in any rule of law, practice or custom in relation to those matters.

DIVISION 5

WINDING-UP

Winding-up of Labuan insurer

128. (1) The Authority shall be a party to any petition for the winding-up of any Labuan insurer.

(2) The Authority may present a petition for the winding-up of a Labuan insurer or its Labuan insurance business on the grounds of its inability to meet any liabilities or when it suspends payment to its creditors.

(3) For the purposes of subsections (1) and (2), the court shall have regard to the interests of the policy owners, other customers and creditors of the Labuan insurer.

(4) In any winding-up of a Labuan insurer, or when a Labuan insurer becomes insolvent, there shall be paid from the assets in the insurance fund or other funds of the Labuan insurer in priority to all other unsecured debts—

- (a) firstly, the costs and expenses of the winding-up, including the costs of the liquidator or the receiver;
- (b) secondly, all wages or salary, whether or not earned wholly or in part by way of commission, including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding one thousand five hundred ringgit or its equivalent in foreign currency or such other amount or denomination as may be specified from time to time in respect of services rendered by him to the Labuan insurer within a period of four months before the commencement of the winding-up;
- (c) thirdly, all amounts due in respect of workers' compensation, under any written law relating to workers' compensation, which accrued before the commencement of the winding-up;
- (d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, which accrued in respect of any period before the commencement of the winding-up;
- (e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding-up by the Labuan insurer as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under any federal law relating to income tax;

- (f) sixthly, the amount of all federal tax assessed under any written law before the date of the commencement of the winding-up or assessed at any time before the time fixed for the proving of debts has expired;
- (g) seventhly, all the liabilities and expenses attributable to its Labuan insurance business of the class for which the particular insurance fund is created; and
- (h) eighthly, after the liabilities and expenses attributable to the Labuan insurance business of the class to which the particular insurance fund referred to in paragraph (g) is applicable have been fully met, the amounts required to make good any deficit in the other insurance funds.

(5) The debts in each class specified in subsection (4) shall rank in the order therein specified but debts of the same class shall rank equally between themselves, and shall be paid in full, unless the assets in the insurance fund of the Labuan insurer are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(6) The provisions of this section shall have effect notwithstanding anything inconsistent therewith or contrary thereto in any other written law.

PART VIII

COMPANY MANAGEMENT

Interpretation

129. In this Part, unless the context otherwise requires—

“company management” means the provision of treasury processing services and such other services, and to such persons, as may be permitted by the Authority;

“management company” means a Labuan company incorporated or foreign Labuan company registered under this Act for the purpose of undertaking or offering to undertake the business of ~~company management.~~